

their production of documents from that case, and at least three of the non-settling Defendants here have substantially completed, or made significant progress toward completing, their production of documents in response to Plaintiffs' first and second sets of document requests.² The remaining Defendants' productions vary in their stage of completeness. Several have made multiple partial productions, a few remain at the initial stages of document production. Likewise, most Plaintiffs remain in the early stages of production. While a number have produced some transactional data, only a few have started non-transactional data productions. Deposition discovery has not yet commenced and several key discovery issues now require the Court's input.

The slower than anticipated pace of discovery reflects that this is a complex case with many, differently situated parties and massive discovery burdens. Despite the somewhat slower pace of discovery, a great deal has been accomplished and the cumulative effects of those accomplishments should begin to expedite the discovery process generally.

Second, as this Court is aware, the U.S. Department of Justice Antitrust Division will be closing its Cleveland field office – the office that is currently handling the pending investigation. *See* Exhibit 1 to the Proposed Order. The schedule distributed to Division staff on July 20, 2012 requires the affected offices to begin a review of all active and closed matters within 31 days, and to complete that review (*i.e.*, either closing or transferring all active matters) within 6 months. *See id.* The schedule provides that the offices will close within 211 days (approximately 7 months) – on or around February 20, 2013. Defendants believe that this “transfer or close” process is likely to yield greater

² The two settling Defendants have also produced the substantial majority of their document productions pursuant to their settlement agreements with Plaintiffs.

clarity as to the outcome of the pending investigation and the potential impact, if any, of that investigation on this case.

The Parties have attempted in their proposed Order to address these two circumstances by, among other things:

1) requiring all parties (other than the phased and focused Defendants) to substantially complete the production of transactional data by the end of September 2012, and substantially complete the production of documents in response to now pending Requests by the end of November 2012, to permit these materials to be reviewed and analyzed in advance of depositions;

2) requesting an in-person status conference with the Court in February 2013, to update the Court on the status of the government investigation and its potential impact on discovery going forward;

3) providing that prior to the February 2013 status conference, any deposition discovery will be limited to such non-merits topics as document and data production;

4) moving the deadline for class certification motions to early June 2013, and correspondingly adjusting the other pretrial deadlines; and

5) providing that prior to February 2013, the parties can schedule depositions for dates between the February 2013 status conference and the June 2013 class certification deadline.

The parties respectfully request that the Court enter the proposed order in the form attached hereto.

Dated: August 10, 2012

Respectfully submitted,

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